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 Proposed Lead Counsel and Proposed  
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 Proposed Liaison Counsel and  
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**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA**

**IN RE ONLINE DVD RENTAL  
 ANTITRUST LITIGATION**

**Master File No. M:09-CV-2029 PJH**

**MDL No. 2029**

**Hon. Phyllis J. Hamilton**

**This document relates to:  
 ALL ACTIONS**

**STIPULATION AND [PROPOSED]  
 PRETRIAL ORDER NO. 2 APPOINTING  
 LEAD COUNSEL AND LIAISON COUNSEL  
 AND OTHERWISE ESTABLISHING  
 ORGANIZATIONAL STRUCTURE FOR  
 ALL PLAINTIFFS AND THEIR COUNSEL  
 IN MDL No. 2029**

1 WHEREAS, at least thirty-five (35) related proposed class actions have been brought by  
 2 individual consumers who subscribe or have subscribed to online DVD rental services against  
 3 Defendants Netflix, Inc., Wal-Mart.com USA LLC, and Wal-Mart Stores, Inc., for their violations of  
 4 Sections 1 and 2 of the Sherman Antitrust Act, 15 U.S.C. §§ 1-2, pursuant to Sections 4 and 16 of the  
 5 Clayton Antitrust Act, 15 U.S.C. §§ 15 & 26, and are pending in this Court (the “Actions”);

6 WHEREAS, at least eighteen (18) other proposed class actions that were filed in other  
 7 jurisdictions have been transferred to this Court pursuant to 28 U.S.C. § 1407 (the “Transferred  
 8 Actions”) by Orders of the Judicial Panel on Multidistrict Litigation (“JPML”) dated April 10, 2009  
 9 (“JPML Order 1”) (1 case) and April 17, 2009 (“JPML Order 2”) (17 cases);

10 WHEREAS, other actions may be transferred to this Court, filed in this Court, related by this  
 11 Court pursuant to Civ. L.R. 3-12 and/or centralized for consolidated or coordinated pretrial  
 12 proceedings pursuant to 28 U.S.C. § 1407 by the JPML and/or by Order of this Court with the Actions  
 13 and the Transferred Actions (the “Future Actions”) (collectively, with Actions and the Transferred  
 14 Actions, the “Consolidated Actions”);

15 WHEREAS, by Order dated April 13, 2009, the Court entered Pretrial Order No. 1 governing  
 16 case management and the organization of Counsel for Plaintiffs in those related cases then pending  
 17 before it;

18 WHEREAS, by Order dated April 15, 2009, the Court entered JPML Order 1, creating MDL  
 19 Master Docket M:09-CV-2029 PJH, to which all Consolidated Actions have been or will be  
 20 centralized for consolidated or coordinated pretrial proceedings pursuant to 28 U.S.C. § 1407 (“MDL  
 21 No. 2029”);

22 WHEREAS, by Order dated April 30, 2009, the Court entered a Supplement to Pretrial Order  
 23 No. 1 (“Supplemental Order”) so as to, *inter alia*, afford Counsel for Plaintiffs in the Transferred  
 24 Actions an opportunity to participate in the selection process for the appointment of Lead Counsel,  
 25 Liaison Counsel, and the Organizational Structure of Plaintiffs and their Counsel in MDL No. 2029;

26 WHEREAS, Counsel for Plaintiffs in the Transferred Actions have in fact had the opportunity  
 27 to participate in the selection process for the appointment of Lead Counsel, Liaison Counsel, and the  
 28

1 Organizational Structure of Plaintiffs and their Counsel in MDL No. 2029, in compliance with the  
2 Supplemental Order;

3 WHEREAS, the Supplemental Order directed that Plaintiffs in the Consolidated Actions  
4 (including the Transferred Actions) file a stipulation for appointment of Lead Counsel, Liaison  
5 Counsel, and the Organizational Structure of Plaintiffs and their Counsel in MDL No. 2029; and  
6 further directed that any such stipulated appointment govern all Consolidated Actions and all Plaintiffs,  
7 including all proposed and actual class members in the Consolidated Actions in MDL No. 2029  
8 (collectively with Plaintiffs, "Plaintiffs");

9 WHEREAS, the undersigned Plaintiffs and their Counsel in all Consolidated Actions  
10 heretofore filed (including the Transferred Actions) do hereby stipulate and agree to the appointment  
11 of Lead Counsel, Liaison Counsel, and the Organizational Structure of Plaintiffs and their Counsel in  
12 MDL No. 2029, with the Powers and Duties set forth below; and

13 In the interest of securing the just, speedy, and inexpensive determination of these proceedings,  
14 pursuant to Federal Rules of Civil Procedure 1 and 23 and Local Civil Rules 1-2 and 16-10(b)(15), it is  
15 hereby ORDERED:

16 1. *Lead Counsel.* Robert G. Abrams of HOWREY LLP is appointed as Lead Counsel for all  
17 Plaintiffs in all Consolidated Actions in MDL No. 2029 ("Lead Counsel").

18 2. *Liaison Counsel.* The law firm of SAVERI & SAVERI, INC. is appointed as Liaison  
19 Counsel for all Plaintiffs in all Consolidated Actions in MDL No. 2029 ("Liaison Counsel"). The San  
20 Francisco office of HOWREY LLP is also authorized to perform the functions of liaison counsel if  
21 needed.

22 3. *Steering Committee.* The law firms of HOWREY LLP, BERGER & MONTAGUE, P.C.,  
23 BERMAN DEVALERIO, SAVERI & SAVERI, INC., and SPECTOR ROSEMAN, KODROFF & WILLIS, P.C. shall  
24 constitute the Steering Committee for all Plaintiffs in all Consolidated Actions in MDL No. 2029  
25 ("Steering Committee"). Lead Counsel shall serve as the Chair of the Steering Committee.

26 4. *Duties and Powers of Lead Counsel.* Lead Counsel shall be responsible for the overall  
27 conduct of the litigation on behalf of all Plaintiffs, as follows:

- a. To promote the orderly and efficient conduct of this litigation and to avoid unnecessary duplication and unproductive efforts;
- b. To conduct all pretrial, trial, and post-trial proceedings on behalf of all Plaintiffs;
- c. To sign any pleadings, motions, briefs, discovery requests or objections, subpoenas or notices on behalf of Plaintiffs, or those Plaintiffs filing the particular papers, but, in any event, no motion may be filed by any Plaintiff without the approval of Lead Counsel, absent leave of Court;
- d. To determine and present (either personally or by designee) in motions, briefs, oral argument or such other fashion as may be appropriate, the position of all Plaintiffs as to all matters arising during pretrial, trial and post-trial proceedings;
- e. To act as spokesperson (either personally or by designee) for all Plaintiffs at pretrial conferences;
- f. To conduct or coordinate discovery (either personally or by designee) on behalf of all Plaintiffs consistent with the requirements of the Federal Rules of Civil Procedure, including the preparation of interrogatories, requests for production of documents, requests for admissions, and the examination of witnesses in depositions, as well as any motion practice related thereto;
- g. To enter into stipulations (either personally or by designee) necessary for the conduct of the litigation with opposing counsel;
- h. To make all work assignments and supervise and Chair the Steering Committee;
- i. To monitor the activities of all Plaintiffs' counsel and to implement procedures to ensure that schedules are met and unnecessary expenditures of time and funds are avoided;
- j. To collect time and expense reports from each firm in the Consolidated Actions (either personally or by designee), including paralegals and any other staff members whose time is expected to be included in any fee petition;

- 1) To this end, all Plaintiffs' counsel shall keep a daily record of their time spent and expenses incurred in connection with this litigation, indicating with specificity the hours and particular activities performed;
  - 2) By the fifteenth day of each month, each firm that may seek an award (or approval) of a fee by the Court shall file with Lead Counsel (or designee established by Lead Counsel), a report summarizing, according to each separate activity, the time and expenses spent by its attorneys, paralegals or staff during the preceding month (and the ordinary billing rates of such personnel in effect during the month) and the accumulated total of the firm's time, hourly rates, and expenses to date;
  - 3) All Plaintiffs' counsel shall endeavor to keep fees reasonable and to choose the most appropriate level of staffing for the tasks required in this litigation; and
  - 4) Lead counsel shall be responsible for preparing any application for an award (or approval) of fees and reimbursement of expenses by Plaintiffs, consistent with the Rules and Orders of this Court. Provided, the provisions of this subparagraph do not limit the discretion of Lead Counsel in basing an allocation of a fee award among Plaintiffs' counsel based on hours, a percentage-based allocation, a combination of the two, or any other reasonable method of allocation, consistent with the Rules and Orders of this Court.
- k. To make and collect assessments (either personally or by designee) from some or all of Plaintiffs' counsel for the purpose of paying the costs necessary to prosecute the case;
  - l. To ensure that work assignments are not given to any firm that has not promptly submitted its time and expense records or paid its assessments;
  - m. To employ and consult with experts;
  - n. To call meetings of Plaintiffs' counsel when deemed appropriate;

- o. To conduct settlement negotiations with defense counsel on behalf of all Plaintiffs' counsel;
- p. To ensure that all Plaintiffs' counsel are kept informed of the progress of this litigation as necessary; and
- q. To otherwise coordinate the work of Plaintiffs' counsel, and perform such other duties as Lead Counsel deems necessary and appropriate based upon his judgment and consideration or as authorized by further Order of the Court.

5. *Duties of Liaison Counsel.* Liaison Counsel shall be the contact between all Plaintiffs' counsel and the Court. Liaison Counsel shall forward any notices from the Court and report upon any communications from the Court to Lead Counsel.

6. *Duties and Powers of the Steering Committee.* The Steering Committee shall be consulted by Lead Counsel to assist in the responsible and efficient prosecution of the litigation as Lead Counsel deems necessary and appropriate based upon his judgment and consideration.

7. *Subcommittees.* Lead Counsel and the Steering Committee may together select working groups or subcommittees to assist in the responsible and efficient prosecution of the litigation as they deem necessary and appropriate based upon their collective judgment and consideration.

8. *Service.* Lead and Liaison Counsel are hereby designated as counsel for all Plaintiffs in the Consolidated Actions upon whom all notices, orders, pleadings, motions, discovery, and memoranda relating to the Consolidated Actions shall be served, and Defendants shall serve papers on all Plaintiffs in the Consolidated Actions by serving Lead and Liaison Counsel by electronic means in compliance with the Rules and Orders of this Court. Lead and Liaison Counsel will be responsible for maintaining a master service list of all parties and their respective counsel.

9. *Binding Effect.* Any agreement reached between Defendant(s) and Lead Counsel or its designee(s), shall be binding on all other Plaintiffs' and their Counsel in the Consolidated Actions in MDL No. 2029.

10. *Privileges Preserved.* No communication between or among any of Plaintiffs' counsel shall be taken as a waiver of any privilege or protection to which Plaintiffs would otherwise be entitled.

1           11. *Applicability.* This Order shall apply to all Consolidated Actions, Actions,  
2 Transferred Actions, and Future Actions, including any and all actions later instituted in, related to cases  
3 in, removed to, or transferred to MDL No. 2029, unless a plaintiff in such a case objects to the  
4 applicability of this Order to its case by filing with the Court, within twenty-one (21) days after being  
5 centralized in MDL No. 2029, an application for relief from this Order, and that application is granted  
6 by the Court for good cause shown.



1 DATED: May 13, 2009

2 Respectfully Submitted,

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23 BY: /s/ Robert G. Abrams

24 *Counsel for Plaintiffs* (Case Nos. 3:09-cv-0002; 0096;  
25 0236; 0274; 0361; 0553 & 0554)

26 ***Proposed Lead Counsel and Proposed Chair and Member of the  
27 Steering Committee for Plaintiffs in MDL No. 2029***

28 And attests in accordance with General Order  
No. 45 X. B. that concurrence in the filing of the  
document has been obtained from each of the  
undersigned counsel:

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17 No. C 09-0096 PJH

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13 No. C 09-0138 PJH

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23 0139 PJH  
24 Faris v. Netflix, Inc., et al., Case No. C 09-0180 PJH  
25 Polk-Stamps v. Netflix, Inc., et al., Case No. C 09-  
26 0244 PJH

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0340 PJH

Melanie Miscioscia v. Netflix, Inc., et al., Case No. C  
09-0377 PJH

James Chatelain v. Netflix, Inc., et al., Case No. C 09-  
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21 Meyer v. Wal-Mart.com USA LLC, et al., Case No. C  
22 09-0361 PJH

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13 09-0377 PJH

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09-00398 PJH  
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13 09-00402 PJH

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21 Bruno, et al. v. Wal-Mart.com USA LLC, et al. Case  
22 No. C 09-00445 PJH

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28 C 09-00553 PJH

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21 Belai v. Netflix, Inc. et al., 3:09-cv-01740 EMC

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 0:09-cv-00158  
 (transferred from District of Minnesota)

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Boynton v. Wal-Mart.com USA LLC, et al.,  
 1:09-cv-00026  
 (transferred from District of New Hampshire)

Mayer v. Wal-Mart.com USA LLC, et al.,  
 1:09-cv-00028  
 (transferred from District of Vermont)



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9 1:09-cv-00026  
10 (transferred from District of New Hampshire)

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18 Mayer v. Wal-Mart.com USA LLC, et al.,  
19 1:09-cv-00028  
20 (transferred from District of Vermont)

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Christina v. Netflix, Inc., et al.,  
3:09-cv-00059  
(transferred from Middle District of Louisiana)

Hotard v. Netflix, Inc., et al.,  
2:09-cv-01938  
(transferred from Eastern District of Louisiana)

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Levin v. Wal-Mart.com USA LLC, et al.,  
1:09-cv-00744  
(transferred from Northern District of Illinois)

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2:09-cv-00241  
(transferred from Northern District of Alabama)

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2:09-cv-00242  
(transferred from Northern District of Alabama)

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2:09-cv-00110  
(transferred from Southern District of West Virginia)

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10 Karatz v. Netflix, Inc., et al.,  
11 1:09-cv-00136  
12 (transferred from Southern District of Indiana)

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27 Bowles v. Netflix, Inc., et al.,  
28 8:09-cv-00250  
(transferred from Middle District of Florida)

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Shafeek v. Netflix, Inc., et al.,  
1:09-cv-00617  
(transferred from Eastern District of New York)

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17 Wagner v. Netflix, Inc., et al.,  
18 3:09-cv-00360  
19 (transferred from Northern District of Ohio)

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28 Jones v. Netflix, Inc., et al.,  
3:09-cv-00131  
(transferred from Southern District of Illinois)

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3:09-cv-01157  
(transferred from District of Puerto Rico)

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22 Cleary v. Wal-Mart.com USA LLC, et al.,  
23 1:09-cv-01383  
24 (transferred from Northern District of Illinois)

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Spears v. Netflix, Inc., et al.,  
8:09-cv-00665  
(transferred from Middle District of Florida)

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**[PROPOSED] ORDER**

The foregoing Stipulation and [Proposed] Order shall apply to any and all Consolidated Actions, as provided above, in MDL No. 2029, including, but not limited to, the following cases:

1. Resnick et al. v. Wal-Mart.com USA LLC, et al., 3:09-cv-00002 PJH
2. O'Connor v. Wal-Mart.com USA LLC, et al., 3:09-cv-00096 PJH
3. Endzweig v. Wal-Mart.com USA LLC, et al., 3:09-cv-00111 PJH
4. Schmitz v. Wal-Mart.com USA LLC, et al., 3:09-cv-00116 PJH
5. Lynch, et al. v. Wal-Mart.com USA LLC, et al., 3:09-cv-00138 PJH
6. Groce, et al. v. Netflix, Inc., et al., 3:09-cv-00139 PJH
7. Sivek v. Wal-Mart.com USA LLC, et al., 3:09-cv-00156 PJH
8. Faris v. Netflix, Inc., et al., 3:09-cv-00180 PJH
9. Slobodin v. Netflix, Inc., et al., 3:09-cv-00225 PJH
10. Anthony, et al. v. Wal-Mart.com USA LLC, et al., 3:09-cv-00236 PJH
11. Polk-Stamps v. Netflix, Inc., et al., 3:09-cv-00244 PJH
12. Sheeler, Jr. v. Wal-Mart.com USA LLC, et al., 3:09-cv-00274 PJH
13. Chapman v. Netflix, Inc., et al., 3:09-cv-00294 PJH
14. Orozco v. Netflix, Inc., et al., 3:09-cv-00297 PJH
15. Landels, et al. v. Netflix, Inc., et al., 3:09-cv-00340 PJH
16. Grime v. Netflix, Inc., et al., 3:09-cv-00349 PJH
17. Meyer v. Wal-Mart.com USA LLC, et al., 3:09-cv-00361 PJH
18. Randall v. Wal-Mart.com USA LLC, et al., 3:09-cv-00368 PJH
19. Hirsch v. Netflix, Inc., et al., 3:09-cv-00375 PJH
20. Miscioscia v. Netflix, Inc., et al., 3:09-cv-00377 PJH
21. Patras v. Netflix, Inc., et al., 3:09-cv-00378 PJH
22. Chatelain v. Netflix, Inc., et al., 3:09-cv-00391 PJH
23. Weiner v. Wal-Mart.com USA LLC, et al., 3:09-cv-00398 PJH
24. Millrood v. Wal-Mart.com USA LLC, et al., 3:09-cv-00399 PJH
25. Kober v. Wal-Mart.com USA LLC, et al., 3:09-cv-00400 PJH

26. Lacabe v. Wal-Mart.com USA LLC, et al., 3:09-cv-00402 PJH
27. Roy v. Netflix, Inc., et al., 3:09-cv-00434 PJH
28. Bruno, et al. v. Wal-Mart.com USA LLC, et al., 3:09-cv-00445 PJH
29. Zaker v. Netflix, Inc., et al., 3:09-cv-00447 PJH
30. Parikh v. Netflix, Inc., et al., 3:09-cv-00496 PJH
31. Johnson v. Wal-Mart.com USA LLC, et al., 3:09-cv-00553 PJH
32. Gannon v. Wal-Mart.com USA LLC, et al., 3:09-cv-00554 PJH
33. Williams v. Netflix, Inc., et al., 3:09-cv-00678 PJH
34. Haddad v. Netflix, Inc., et al., 3:09-cv-00958 PJH
35. Wiebe v. Netflix, Inc., et al., 3:09-cv-01274 PJH
36. MaGee v. Netflix, Inc., et al., 3:09-cv-1793 PJH (formerly 2:09-cv-00070, transferred from Western District of Washington)
37. Touchton v. Netflix, Inc., et al., 2:09-cv-00241 (transferred from Northern District of Alabama)
38. Kopera v. Netflix, Inc., et al., 2:09-cv-00242 (transferred from Northern District of Alabama)
39. Bowles v. Netflix, Inc., et al., 8:09-cv-00250 (transferred from Middle District of Florida)
40. Spears v. Netflix, Inc., et al., 8:09-cv-00665 (transferred from Middle District of Florida)
41. Levin v. Wal-Mart.com USA LLC, et al., 1:09-cv-00744 (transferred from Northern District of Illinois)
42. Cleary v. Wal-Mart.com USA LLC, et al., 1:09-cv-01383 (transferred from Northern District of Illinois)
43. Jones v. Netflix, Inc., et al., 3:09-cv-00131 (transferred from Southern District of Illinois)
44. Karatz v. Netflix, Inc., et al., 1:09-cv-00136 (transferred from Southern District of Indiana)
45. Hotard v. Netflix, Inc., et al., 2:09-cv-01938 (transferred from Eastern District of Louisiana)
46. Christina v. Netflix, Inc., et al., 3:09-cv-00059 (transferred from Middle District of Louisiana)
47. Michalski, et al. v. Netflix, Inc., et al., 0:09-cv-00158 (transferred from District of Minnesota)
48. Boynton v. Wal-Mart.com USA LLC, et al., 1:09-cv-00026 (transferred from District of New Hampshire)



49. Shafeek v. Netflix, Inc., et al., 1:09-cv-00617 (transferred from Eastern District of New York)
50. Wagner v. Netflix, Inc., et al., 3:09-cv-00360 (transferred from Northern District of Ohio)
51. Ortiz-Cardona v. Netflix, Inc., et al., 3:09-cv-01157 (transferred from District of Puerto Rico)
52. Mayer v. Wal-Mart.com USA LLC, et al., 1:09-cv-00028 (transferred from District of Vermont)
53. Walters, et al. v. Netflix, Inc., et al., 2:09-cv-00110 (transferred from Southern District of West Virginia)
54. Kra v. Netflix, Inc., et al., 3:09-cv-01499 PJH (related case motion granted; centralization pending)
55. Belai v. Netflix, Inc., et al., 3:09-cv-01740 EMC (related case motion filed; centralization pending)

**IT IS SO ORDERED.**

DATED: 5/15/09

